

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SEAN ADAM ROGERS,

Plaintiff,

v.

R. SHARP, et al.,

Defendants.

Case No. 1:20-cv-652

HON. JANET T. NEFF

/

OPINION AND ORDER

Plaintiff filed this 42 U.S.C. § 1983 civil rights action as a *pro se* litigant. The only remaining claim in this matter is Plaintiff's retaliation claim against Defendant Chesny, who now moves for summary judgment (ECF No. 36). The motion was referred to the Magistrate Judge, who issued a Report Recommendation recommending Defendant Chesny's Motion be granted (ECF No. 38). The matter is now before the Court on Plaintiff's objections to the Report and Recommendation (ECF No. 39). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff asserts that Defendant Chesny falsely charged him with a misconduct violation in retaliation for filing grievances against Michigan Department of Corrections (MDOC) staff. Plaintiff alleges that Defendant Chesny asked him if he had been writing grievances against prison personnel. Plaintiff responded he had but that he did not "want any trouble," and that he planned

to file a grievance against Defendant Chesny for helping other staff members “harass him.” This, Plaintiff claims, led Defendant Chesny to falsely charge Plaintiff with a misconduct violation.

Defendant Chesny has moved for summary judgment (ECF No. 36). Plaintiff did not file a response to the Motion. The Magistrate Judge recommended the motion be granted (ECF No. 38 at PageID.437).

Plaintiff raises one ground for his objection, arguing that it was error for the Magistrate Judge to rule that Plaintiff forfeited or waived his claim by not responding to Defendant’s Motion for Summary Judgment. As discussed below, the Court sees no legal or factual error in the Magistrate Judge’s analysis or conclusion.

Plaintiff asserts that the Magistrate Judge incorrectly held that he waived his claim by failing to respond to Defendant’s Motion for Summary Judgment. He relies on *Bates v. Ohio Department of Rehabilitation and Corrections*, No. 1:22-cv-337, 2023 WL 4348835 (S.D. Ohio, July 5, 2023) and *Delphi Automotive Systems, LLC v. United Plastics, Inc.*, 418 F. App’x 374, 381 (6th Cir. 2011). He argues that pursuant to these cases, it was error for the Magistrate Judge to grant Defendant’s motion based solely on the fact that he failed to respond.

Plaintiff’s argument misses the mark and misunderstands the Magistrate Judge’s reasoning. The Magistrate Judge analyzed the three elements Plaintiff was required to show to prove his retaliation claim and the evidence presented by the parties. The Magistrate Judge found that Defendant Chesny presented evidence that his decision to charge Plaintiff with misconduct was not a retaliatory act, while Plaintiff failed to respond with evidence to the contrary. This established the absence of a factual dispute regarding the retaliation claim, and accordingly the Magistrate Judge recommended this Court grant Defendant’s motion. The Magistrate Judge

analyzed Plaintiff's failure to respond to the motion as a waiver, *in the alternative* to granting Defendant's motion based on the evidence presented.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that Plaintiff's Objection (ECF No. 39) is DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 38) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 36) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: August 29, 2023

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge